



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534

July 9, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0976 2414

James R. Botbyl
Silvara Stone Company, LLC
148 Rutgers Circle
Crossville, Tennessee 38558

Subject: DIRECTOR'S ORDER NO. WPC07-0137
SILVARA STONE COMPANY, LLC and LONE STAR ENERGY, INC.
CUMBERLAND COUNTY, TENNESSEE

Dear Mr. Botbyl:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0670.

Sincerely,

A handwritten signature in black ink, appearing to read "Vojin Janjic", is written over a circular stamp. The stamp contains the text "Vojin Janjic" and "Manager, Enforcement and Compliance Section".

Vojin Janjic
Manager, Enforcement and Compliance Section

cc: DWPC-EFOK-Steven Turaski
DWPC-NCO-E&C

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
SILVARA STONE CO., LLC and)	
LONE STAR ENERGY, INC.)	
)	
)	
RESPONDENTS)	CASE NO. WPC07-0137

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the “division”) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

Silvara Stone Company, LLC (hereinafter “Respondent Silvara”) is the operator of a dimension stone quarry located on Chestnut Hill Road in Cumberland County, Tennessee (hereinafter the “site”). Service of process may be made on Respondent Silvara through its registered agent, James R. Botbyl, at 148 Rutgers Circle, Crossville, Tennessee 38558.

V.

The Respondents are “persons” as defined at T.C.A. §69-3-103(20), and as hereinafter stated, the Respondents have violated the Act.

VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Further, the State of Tennessee requires a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of wastewater from mining operations. Rule 1200-4-5-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit.

VII.

T.C.A. §69-3-108 requires a person to obtain a permit from the department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost

resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VIII.

The unnamed tributaries to Pinethicket Branch, Pinethicket Branch, and Daddy's Creek are referred to herein as, "waters of the state", as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "Use Classifications for Surface Waters, et al," is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, the unnamed tributary to Pinethicket Branch, Pinethicket Branch, and Daddy's Creek have been classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. Additionally, Daddy's Creek has been further classified by the division as High Quality Water.

FACTS

IX.

On July 19, 2006, division personnel conducted a site investigation and observed Respondent Silvara conducting mining activities on the east side of Pinethicket Branch. A direct discharge of sediment was observed entering Pinethicket Branch from the east side of the stream. Upon further investigation, it was determined that a wastewater discharge from mining operations was occurring onsite, without NPDES permit authorization.

X.

On July 26, 2006, the division issued a Notice of Violation (NOV) to the Respondents for the violations observed during the July 19, 2006, site investigation. The NOV requested that the Respondents submit a response for the observed violations within 15 days of receipt of the NOV.

XI.

On October 5, 2006, the division received a NPDES permit application from Respondent Silvara for the mining site.

XII.

On November 3, 2006, the division issued correspondence to Respondent Silvara regarding the NPDES permit application received on October 5, 2006. The correspondence notified Respondent Silvara that the NPDES permit application was incomplete, and further informed Respondent Silvara of necessary information needed to complete the NPDES permit application process. Additionally, the division notified Respondent Silvara that the discharge from the site could potentially impact Daddy's Creek, which the division has classified as High Quality Water. The division further notified Respondent Silvara that the revised permit application material should be submitted within 30 days of receipt of the correspondence.

XIII.

On January 18, 2007, the division issued correspondence to Respondent Silvara notifying the Respondent that the revised NPDES permit application material, requested in the November 3, 2006, correspondence, had not been received. Additionally, this correspondence again notified Respondent Silvara that discharges from mining operations occurring at the site are not authorized until a NPDES permit is issued.

XIV.

On March 9, 2007, the division received revised NPDES permit application material from Respondent Silvara for the site.

XV.

On April 27, 2007, the division received additional revised NPDES permit application material from Respondent Silvara for the site.

XVI.

On May 1, 2007, division personnel conducted a site investigation and observed that mining activities were still occurring. Additionally, it was observed that spoil material had been placed along Pinethicket Branch on the western portion of the site, and this material had entered Pinethicket Branch in several locations, resulting in a condition of pollution.

XVII.

On May 8, 2007, the division received correspondence from Respondent Silvara, via email, stating that the spoil material along the western portion of the site, observed during the May 1, 2007, site investigation, had been moved back from the stream area on May 3, 2007.

XVIII.

On May 10, 2007, the division issued correspondence to Respondent Silvara requesting social and economic justification for the degradation of High Quality Waters, to complete the NPDES permit application process. The division further notified Respondent Silvara of the information needed to fulfill this request and the process to be taken to complete the NPDES permitting process once the justification is received.

XIX.

On May 14, 2007, the division issued a NOV to the Respondents regarding the violations observed during the May 1, 2007, site investigation. The NOV instructed the Respondents to submit, within 30 days of receipt of the NOV, a restoration and stabilization plan, to ensure the stabilization of the spoil area at the western portion of the site and to prevent spoil material from entering Pinethicket Branch. The plan should address:

- Relocation of all spoil material to 25 feet from the top of the stream bank, or out of flood prone areas, whichever is greater.
- A revegetation plan, including native tree species at a rate of 400 stems per acre.

- Erosion prevention and sediment control (EPSC) measures to be implemented immediately and illustrated in the plan.

The NOV again notified the Respondents that the site is not authorized to discharge wastewater until NPDES permit authorization has been issued.

XX.

On May 18, 2007, division personnel conducted a site investigation to confirm that the spoil area at the site had been pushed back from the stream. It was observed that the spoil area had been pushed back, but additional removal activities would be needed to ensure that the area is permanently stabilized and no spoil material will enter Pinethicket Branch.

XXI.

By June 18, 2007, the division had received all information and required documentation from Respondent Silvara regarding the social and economic justification for discharging into High Quality Waters.

XXII.

On June 26, 2007, the division issued a NOV to the Respondents for failure to submit the restoration and stabilization plan as requested in the May 14, 2007, NOV.

XXIII.

To date, the division has not received the restoration and stabilization plan, as requested in the May 14, 2007, NOV.

XXIV.

During the course of investigating this matter, the division incurred damages in the amount of SEVEN HUNDRED FOURTEEN DOLLARS AND FORTY CENTS (\$714.40).

VIOLATIONS

XXV.

By discharging wastewater without authorization under a NPDES permit, the Respondents have violated T.C.A. §§Sections 69-3-108(a) and 69-3-114(a), which state:

T.C.A. §69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the Commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

XXVI.

By physically altering waters of the state without authorization under an individual ARAP, the Respondents have violated T.C.A. §Section 69-3-108(a), as referenced above, §69-3-108(b) and §69-3-114(b), as referenced below.

T.C.A. §69-3-108(b)

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXVII.

By discharging wastewater into waters of the state that resulted in a condition of pollution, the Respondents have violated T.C.A. §69-3-114(a) and §69-3-114(b), as referenced above.

ORDER AND ASSESSMENT

XXVIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondents:

1. The Respondents shall, within FIFTEEN (15) DAYS of receipt of this Order, submit for division approval a stabilization and restoration plan to permanently stabilize all spoil areas at the site. The plan shall include, but not be limited to, implementing appropriate erosion prevention and sediment (EPSC) measures to ensure no spoil material enters waters of the state, removing the spoil material from Pinethicket Branch and establishing a 25-foot buffer zone from the top of the stream bank to the toe of the spoil area berm, revegetating the area with native plant species, and a time schedule for implementation and completion of the proposed activities. The plan shall be submitted to the manager of the division's Mining Section located at the Knoxville Environmental Field Office (KEFO) at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondents shall, within THIRTY (30) DAYS of receipt of division approval, complete the activities outlined in the approved stabilization and

restoration plan and notify the manager of the division's Mining Section of completion.

3. The Respondents are hereby assessed a CIVIL PENALTY in the amount of SIXTY THREE THOUSAND SEVEN HUNDRED DOLLARS (\$63,700.00), payable as follows:

a. The Respondents shall pay a CIVIL PENALTY of SIXTEEN THOUSAND DOLLARS (\$16,000.00) to the division within THIRTY (30) DAYS of receipt of the Order and Assessment.

b. The Respondents shall pay a CIVIL PENALTY of SEVENTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$17,700.00) to the division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 1 above in a timely manner.

c. The Respondents shall pay a CIVIL PENALTY of THIRTY THOUSAND DOLLARS (\$30,000.00) to the division within THIRTY (30) DAYS of default if, and only if, the Respondents fail to comply with Item 2 above in a timely manner.

4. The Respondents are hereby assessed DAMAGES in the amount of SEVEN HUNDRED FOURTEEN DOLLARS AND FORTY CENTS (\$714.40) to be paid to the division within THIRTY (30) DAYS of receipt of this Order.

5. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondents are advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondents in the future. The director may, for good cause shown by the Respondents, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondents' request in writing. Should the Respondents fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due 30 days thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 9th day of July, 2007.

A handwritten signature in dark ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109 and 69-3-115, allow the Respondents to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondents must file with the Director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty days of receiving this Order and Assessment.

If the required written petition is not filed within thirty days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to Tenn. Code Ann. §§69- 3 -109 and 69 -3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by Tenn. Code Ann. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Dept. of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, at the address above. Please write your case number on all payments and all correspondence concerning this matter.